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**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARTIN E. TOLAND
Claimant

VS.

CITY OF HUTCHINSON
Respondent
Self-Insured

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Docket No. 258,630

ORDER

Respondent appeals from an Award entered by Administrative Law Judge Bruce E. Moore on April 29, 2003. Oral arguments were presented to the Appeals Board (Board) on November 4, 2003.

APPEARANCES

Claimant appeared by Matthew L. Bretz of Hutchinson, Kansas. Respondent appeared by Scott J. Mann of Hutchinson, Kansas.

RECORD AND STIPULATIONS

The Board considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant suffered two separate accidents and injuries. Although this case is docketed as a single claim, it encompasses both accidents. On February 13, 2000, claimant fell injuring his left knee. On March 7, 2000, claimant suffered a second fall, this time injuring both knees. Judge Moore found claimant entitled to a general body disability because of the simultaneous injuries to the knees on March 7, 2000. Averaging the functional impairment ratings of orthopaedic surgeons, Kenneth A. Jansson, M.D., and C. Reiff Brown, M.D., Judge Moore found claimant's permanent impairment of function is 7.8 percent. Judge Moore further found claimant was entitled to permanent partial disability compensation based upon a 53.83 percent work disability, which he arrived at by averaging a 31.66 percent task loss with the 76 percent actual wage loss.

Respondent contends the ALJ erred. Respondent argues claimant only suffered permanent impairment to his right knee in the March 7, 2000 accident, and attributes all of claimant's permanent impairment in his left knee to the February 13, 2000 accident. Respondent contends that claimant is therefore only entitled to permanent partial disability compensation for two separate scheduled injuries, not a general body disability.

Claimant requests that the Board affirm the ALJ's Award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having considered the entire record, together with the stipulations and arguments of counsel, the Board finds that the Award should be affirmed. The Board agrees with the analysis of the evidence and law as set forth in the Award and adopts the ALJ's findings, conclusions and orders as its own. Specifically, the Board finds claimant suffered a general body disability and is entitled to a permanent partial disability award based upon work disability.

The Board further finds claimant has proven a whole person impairment and is entitled to a general body disability award not only because there was a simultaneous injury and aggravation to both knees in the March 7, 2000 accident, but also because that second slip and fall accident would not have occurred but for the first accident. The left knee injury claimant sustained on February 13, 2000 resulted in his being placed in a knee immobilizer brace. The altered gait caused by the knee immobilizer brace contributed to claimant losing his balance and falling on March 7, 2000. Thus, the second accident was a direct consequence of the first.¹

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Moore dated April 29, 2003, is affirmed.

IT IS SO ORDERED.

¹ See *Nance v. Harvey County*, 263 Kan.542, 952 P.2d 411 (1997); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

Dated this _____ day of November 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Matthew L. Bretz, Attorney for Claimant
Scott J. Mann, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director